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REMARKS

Claim rejections under 35 USC 102

All of the pending claims have been rejected under 35 USC 102(e) as being anticipated by Aminpur (6,482,726). Applicant respectfully traverses the rejection. Applicant notes that claims 1 and 17 are independent claims, from which the remaining pending claims ultimately depend. Applicant discusses claim 1 as representative of claim 17 as amended, such that all of the claims are patentable for at least the same reasons that claim 1 is.

Claim 1 is limited to a semiconductor device that comprises various elements “*during fabrication.*” As such, “the lower layer and the upper layer hav[e] a substantially identical width *after etching.*” Applicant submits that this limitation is not found in Aminpur. The Examiner indicates that layers 540 and 550 of Aminpur are the lower and upper layers, respectively, of the claimed invention, where in FIG. 5 these layers are shown as having a substantially identical width. However, the claimed invention is limited to these layers having a substantially identical width *after etching*, and after etching, the layers 540 and 550, as depicted in FIGs. 6 et seq. of Aminpur, do *not* have a substantially identical width. For instance, in FIG. 6 of Aminpur, the layer 550 (indicated in FIG. 6 as 650) has a *different* width than the layer 540.

Applicant strongly asserts that the above-mentioned limitation of the lower and upper layers having a substantially identical width after etching is *not* a process limitation to be given no weight in the patentability determination. The Examiner himself states that “the process limitations . . . are given no weight in the patentability determination *unless they produce some structural or material differences.*” (Office Action, p. 2, para. 2, last sentence) (Emphasis added) And here, such limitations do! The claimed invention as recited in claim 1 is limited to a semiconductor device comprising various elements “*during fabrication.*” And, *during fabrication*, the semiconductor device of claim 1 has an upper and a lower layer that have a “*substantially identical width after etching.*” The *etching* does indeed produce a structural or material difference – that the lower and upper layers have a *substantially identical width after*

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*the etching has taken place.* By comparison, in Aminpur, after etching has taken place, the lower and upper layers do *not* have a substantially identical width.

Therefore, it is proper and required for the Examiner to take into account the limitation of the lower and upper layers having “a substantially identical width *after etching*,” and not *before* etching. Applicant strongly asserts that Applicant’s position would be sustained on appeal, and is ready to appeal this patent application should that be necessary. For the above-mentioned reasons, therefore, the pending claims, as discussed in relation to claim 1 as representative of the pending claims, are allowable.

#### Conclusion

Applicant has made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Randy Tung, Applicant’s Attorney, at 248-540-4040, so that such issues may be resolved as expeditiously as possible. For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Randy Tung', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a horizontal stroke at the end.

Randy Tung (31,311)